



Lessons from China's Smart Court Reform

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PROFESSIONAL ARTICLE



ABSTRACT

Dory Reiling was on the PhD Committee. Straton Papagianneas defended his PhD thesis on digitisation in courts in the People's Republic of China (PRC) at Leyden University in September 2024. They subsequently had a conversation on lessons from his thesis for courts and judiciaries more generally. They discussed China's Smart Court Reform, the ideology behind it, its future, and some lessons that can be drawn for liberal democracies. This is a report of their conversation.

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KEYWORDS:

digitisation in courts;
smart courts; artificial
intelligence; ideology;
People's Republic of China

TO CITE THIS ARTICLE:

Dory Reiling and Straton
Papagianneas, 'Lessons
from China's Smart Court
Reform' (2025) 16(1)
*International Journal for
Court Administration* 2. DOI:
[https://doi.org/10.36745/
ijca.679](https://doi.org/10.36745/ijca.679)

Let me start by saying that it was a pleasure to read your thesis. In your thesis you provide a clear and relevant analysis of the digitization and automation of courts in the People's Republic of China (PRC). This offers a fascinating overview of technological developments in a legal system that is different from that of liberal democracies. I would like to explore some aspects of the PRC's judicial system and its plans for using artificial intelligence (AI).

WHAT ARE SMART COURTS?

Smart Courts or Smart Court Reform (SCR) is the name given by the Chinese government to the far-reaching digitisation and automation efforts of its judiciary, i.e., its courts, procuratorates, and public security bureaus (responsible for policing, public security, and social order). In Chinese, it is also referred to as “judicial informatization”, referring to how information technologies (IT) are integrated into judicial processes.

However, SCR goes beyond the use of basic IT in justice. It is about the deployment of advanced technological applications, such as big data analytics, algorithmic software, and artificial intelligence (AI) that are all integrated into a single platform, accessible to judges and other legal officers. These platforms and software help judges with case-management, make the judicial process more convenient for litigants thanks to their integration with mobile apps, and increase connectivity between the different stakeholders in the judicial process.

WHY DID CHINA LAUNCH THE SMART COURT REFORM?

There are many reasons for this, which depend on the perspective of specific actors in this development. For courts, the appeal comes from being able to position itself at the vanguard of global developments in the use of algorithmic systems and big data analytics in justice administration. It is also a way for the judiciary to improve its standing vis à vis other governance actors, as traditionally, the judiciary has been one of the weaker institutions in China's political-legal system.

From the perspective of central authorities, digital technologies can be leveraged to enhance the impact of other reforms aimed at strengthening centralised oversight and control over judicial work. Furthermore, it helps them achieve judicial transparency, improving consistency in judicial outcomes, and increasing the public credibility of courts.

Smart Courts and the convenience they provide for the public by reducing barriers to justice, improving transparency, and so forth, also fits in the broader reforms aimed at creating a more “people-focused” approach to governance.

PEOPLE FOCUSED IDEOLOGY

How important is this “people focused” ideology in the overall ideological mix behind ongoing reforms in China? How do you conceptualize ‘ideology’, and what do you think the relation is between ideology and technology? How important is “people focused” ideology in this overall ideological mix? e.g. “co-construction, co-governance and sharing” and the whole notion of “people-centredness”?

Bringing the normative and ideological features of the political system into the argument, you concluded that technology allows the Party-state “to have its cake and eat it too”. You say that technology enables the Chinese Party-state to maintain a balanced approach: it upholds a functional normative system with procedures that allow it to protect its interests without disrupting the overall system. How does that work?

Ideology in and of itself is extremely important behind developments like automation in government and the judiciary. Ideology is our framework of how we see the world and how we explain things that happen in it. It determines what values and outcomes we prioritise with the deployment of these technologies. Courts in China have a very explicit dual function: On the one hand, they are a legal institution with its own agency, offering institutionalised mechanisms for dispute resolution. On the other hand, they are a political agent that executes the political will of the party-state in the form of stability maintenance, implementing central policies, and enhancing regime legitimacy.

Therefore, the “people focused” ideology is quite important. This notion indicates that courts have a populist function, especially with the digitisation of the courts and the advent of automated decision-making (ADM). Courts are part of a political system that greatly emphasises social stability. Therefore, courts have always been sensitive to threats of unrest and have often tried to appease litigants by circumventing procedures. Oftentimes, a court’s main priority for a case outcome is its political correctness, rather than its legality.

Part of this political correctness is ensuring that the people feel like they have achieved justice in their legal case. This ensures social stability and by extension maintains regime legitimacy. Ensuring this populist appeasement is also embedded in the regulations of the smart courts and the use of AI in the judiciary. For example, the Smart Court Rules, a set of three documents regulating the operation of smart courts, have the explicit purpose of ensuring the fair and efficient trial of cases. Values such as informed consent and ownership over the digital proceedings feature prominently in these documents. The rules are not only focused on facilitating the use of AI in the judiciary, but also on ensuring that litigants *understand* and *consent* to the digitised and automated proceedings, so as to ensure that they maintain a sense of fairness and autonomy during the entire process. Sometimes, this comes at the cost of efficiency. It is therefore safe to argue that these regulations exist as safeguards against the wrongful use of AI and ADM, by putting the people at the centre of it.

The “people focused” ideology and how it is expressed in the many policies, regulations, and discussions around Smart Courts underscores its importance. Therefore, we first need to understand the ideology behind it. This helps us with getting a better understanding of what the rules, procedures, and policies are trying to achieve.

Nevertheless, despite this “people-focused” approach in the procedures, the party-state has the final say. At its core, Leninism holds that the people govern the country through a vanguard party that embodies the interest of the people. Therefore, the party-state needs to follow the mass line to make the correct decisions. However, this does not imply widespread public participation: it all happens within a tightly circumscribed framework. Within this ideological framework, public participation enhances party control. And because the vanguard party represents the people, it is in the best position to know what is best for the people. Therefore, the vanguard party

has the exclusive prerogative to decide what the best outcome is in a case. Hence, it can justify party intervention within the normative framework of the court system.

Smart courts allow the party to intervene in court decisions without upending the entire normative system by automatically detecting and filtering cases that require political intervention. Smart courts have far-reaching surveillance functions, monitoring and registering every action. When a smart system flags a sensitive case, it facilitates the intervention by drawing multiple hierarchical levels within the court into the intervention procedures. This helps with enforcing compliance and ensures proper oversight by the court leaders, following internal rules and procedures for intervention. In this sense, technology allows the party to maintain its normative system while also having proper channels of control and intervention that do not disrupt the overall system. The technology enforces proper compliance and prevents abuse of these procedures.

Regardless of one's ideological standpoint, the Chinese case shows us how important it is to be explicit about one's ideological values and then discuss the way one wants to express this in policies and laws. This is crucial for the Dutch and other European judiciaries. Persistently resisting innovations such as ADM and AI technologies risks rendering the justice system obsolete.

Therefore, it is extremely important that judiciaries commit to further digitisation and automation. They need to decide what ideological values should be prioritised and ensure that there exist enough safeguards built in their systems. Technology is not value neutral and it can be used to enhance values for good.

Given this dual role of courts within the Chinese political-legal system, what could be the implications reviewing back the development of the Chinese Judicial Reforms in relation to the anti-corruption policies and practices in China?

Anti-corruption policies have been very strong ever since Xi Jinping came to power in 2012. Courts have also been affected by this campaign in multiple ways. Two important judicial reforms during the first phase of the anti-corruption campaign (2012–2018) were the judge quota reform and the judicial responsibility reform.

The judge quota reform aimed to select better-qualified judges and give them more resources and autonomy to do their work. Nonetheless, its goals were contradictory: it aimed to disentangle judging from its bureaucratic controls while simultaneously increasing political control. Although this seems counterintuitive, it makes sense in the ideological framework because politics surpasses law in China. Improving rule-based adjudication does not entail political neutrality or institutional autonomy as a whole in this framework.

Therefore, these reforms, just like the anti-corruption campaign, were about re-establishing vertical political control and eliminating local bureaucratic control, which was prone to abuse and corruption. This stems from the Marxist-Leninist idea that only centralised vertical control can ensure proper governance.

The judicial accountability reform included a deprivation of supervisory powers from the court leaders, effectively ending a long-time issue with the way judicial decisions were made. It also made the recording of interventions mandatory and kept judges accountable for life for their decisions.

In conjunction with the anti-corruption campaign, these reforms have improved the position of courts within China's broader political-legal system and, by extension

the judicial and economic environment. Empirical evidence has shown that the anti-corruption campaign promoted a better judicial environment, improving the quality of judicial decisions, boosting public confidence in the judicial system, and encouraging firms to settle conflicts through court. The increased consolidation of political power as a result of Xi Jinping's anti-corruption campaign has also contributed to this success.

WHAT WILL THE FUTURE OF SMART COURT REFORM (SCR) IN CHINA LOOK LIKE?

The PRC's court system is rapidly embracing the possibilities that new technologies have to offer. It has big ambitions for the future. The China Judgement Online Platform (CJO) already contains well over 100 million court decisions covering all jurisdictions and all courts in China. You write that the courts have now started with the next step: creating algorithmic and automated systems. This next phase involves deeper integration of IT into daily operation of individual courts, you write.

*Therefore, I would like to hear more on your views of what this future of Smart Court Reform (SCR) in China may look like. The Chinese Supreme Court issued an AI Opinion in 2022, to standardise and improve the use of AI in the judiciary. By 2030, this document says, AI must provide whole-process high-level smart support. In your words: AI needs to be fully operational and widespread across all courts by then. AI is developing very fast, but do you think this goal for 2030 is **realistic**?*

And what would this look like? Can you, based on what you have discovered in your research, elaborate on how the future of the Chinese court system may look like? What will happen once the courts will start using AI and perhaps even automated decisions? Can you please reflect on this?

I believe the goal of achieving courts' full integration with AI-systems is realistic. We are still 5 years off from the deadline and already there are courts that have extensively integrated smart software based on AI into the judicial process. This does not mean that an AI will handle the entire judicial process independently from submission to decision. Rather, I believe it means that at every procedural node in the judicial process, an AI-system that has a specific function will be present.

It is always difficult to predict the future, but as it stands now, I think the future of SCR looks reasonably good from a Chinese perspective. The Chinese judiciary, government, and especially the party, wants a justice system that is fully covered by digital systems. It wants to be able to intervene at any moment when their political bottom line is threatened, it wants to be able to immediately determine who is responsible for what procedural step, and for what decision. It wants that control and political oversight, which smart courts easily permit. While providing a lot of control tools for the party-state, it also improves the convenience for citizens, therefore improving the reliability and trustworthiness of courts as an institution.

The latest development has been the publication of a judicial policy document by the Supreme People's Court (SPC) on Regulating and Strengthening the Application of Artificial Intelligence in the Judicial Field. It has two goals: By 2025, it wants that all courts to deploy AI to support external judicial services and internal management. By 2030, AI needs to be fully operational and provide high level support for the judicial process.

Currently, it is claimed that China has achieved full coverage of smart courts at all levels. Every step of the judicial process, i.e., case filing, payment, evidence exchange, trial hearing, and electronic documents service, has already been digitised. Numerous courts across the country have already integrated AI into different steps of this process, such as an AI system that filters submitted cases based on their political sensitivity, systems that provide smart assistance in case preparation and trial hearings, and systems that adjudicate similar low-stakes cases in bulk. However, there is little information about the actual quality of these systems and their qualitative impact on court work.

Nevertheless, looking at the pace at which AI has developed, the pace at which Chinese courts have digitised in the past decade, and the already extensive AI systems being used in numerous courts, whether basic or complex, it is likely that by 2030 the goal of having an exhaustive and complex network of different AI systems working at all nodes in the judicial process can be achieved.

In addition to the aforementioned reasons, the Chinese government wants to become a global player in AI development and has the capacity to steer its industries towards its goals. Therefore, barring any technological or international barriers, I believe achieving this goal is very much within the realm of possibilities.

COURTS' ACCEPTANCE OR RESISTANCE OF SCR

What are the internal and external motivations/accountabilities for the judicial systems and officials to comply or resist the smart court changes? Will this reform be stable, sustainable, and effective according to the party's objectives? What is your prediction?

First and foremost, it is important to state that the judiciary in China is not an independent legal institution like in liberal democratic rule of law countries. In the Chinese political-legal system, the judiciary is firmly embedded within the larger governance apparatus, and gets categorised as such. By extension, judicial officers are not legal professionals. They are closer to the equivalent of a civil servant or bureaucratic official. Moreover, the court leaders (i.e., court (vice-) presidents, division (vice-) chiefs) are party-members. Therefore, they do not only answer to their administrative superior (the government leader of equivalent or superior administrative rank), but also to their political superior, i.e., the local party secretary. Moreover, how well court leaders implement top-down reform policies impacts their performance assessments.

This does not imply that Smart Court Reform only has negative effects for judges. SCR helps reduce the workload for judges significantly, such as helping with the determination of jurisdiction, identifying relevant legislation, analysing and synthesising the legal merit of the case, identifying evidence, and providing them with ADM support. Moreover, many administrative procedures have either been digitised or automated, reducing the amount of time lost on administrative tasks. Smart platforms allow judges to have a full oversight of their tasks, enabling them to move forward in the judicial process with the click of a mouse, or even automatically notifying those the one's responsible for the next procedural step.

Consequently, SCR enhances consistency and standardisation in judicial proceedings and outcomes. Another consequence of this reform is that it increases political oversight over judges' behaviour and reduces the discretionary space. However, other

reforms such as the judicial responsibility reform have increased judicial accountability and political oversight over the work of judges. Therefore, the technology of SCR is explicitly meant to enhance parallel reforms aimed at increasing vertical control over the judiciary.

In this sense, there is little way and motivation for judges to resist. Through a “carrot & stick” approach, judicial officers are encouraged to adopt smart technologies.

LESSONS FOR LIBERAL DEMOCRACIES

Then, I would like to close with some lessons that can be drawn from your work for the judicial systems in liberal democracies.

You say that the PRC’s judicial system needs to be understood against the background of its political ideology. I am wondering whether this would also be true for judicial systems in liberal democracies, and I would like your views on this.

Ideology is just as important for judicial systems in liberal democracies as in China. As I stated earlier, it determines how we view the world, and gives us a framework to make sense of how (public) life should be. This is not any different in liberal democracies. Our biggest hurdle as western judicial experts is that our thinking is intimately intertwined with this ideology, so it is very hard to recognise where it comes from and how it defines our thinking, because it is our thinking.

Western observers are prone to use the term “ideology” as an insult for the different ways that other countries think about good governance and the role of law in their societies. However, our approach to law and governance, which is encapsulated in the term “the rule of law”, or in German and Dutch “Rechtsstaat”, is also that – an ideology. It is a way how we view the world and part of our larger interpretative framework to make sense of how (public) life should be.

Therefore, I think judicial experts who are involved in developing judicial AI need to have a long hard look in the mirror and make explicit what kind of values they want to support and deliver, and invest in safeguarding these values in their development of AI.

PUBLIC-PRIVATE COLLABORATION

In China, as much as elsewhere, digital governance approaches are frequently connected with the service providing (and, consequently, interests) of commercial actors. What are the implications of crucial public services being re-designed at a public-private nexus?

The biggest implications of these public services being outsourced to private enterprises, is that it allows private enterprises to capture and influence the way that these services are delivered. Especially with advanced technologies, such as AI, that enable ADM, the technology developers have a significant influence on how issues such as the ethics and fairness of these software are going to play out in the court cases. This is incredibly difficult to predict, and therefore something that should not be left to only private enterprises.

China’s approach has been to develop these systems together. For example, the Shanghai 206 AI system was developed by the Shanghai High Court in cooperation with iFlytek, a private tech company. Together, they set up a task force composed

of judicial staff from Shanghai's courts, procuratorates, public security organs, and technical staff from iFlytek. Through this cooperation, the judiciary maintained a big stake and influence in the development of this system, which enabled them to ensure that the system maintained the proper procedural safeguards.

I believe this is the way to go for Europe as well: private developers need to meet strict conditions and include strong safeguards to protect procedural fairness. This can be done through regulations and by setting up public-private partnerships where they are actively involved in the development so they can guarantee that developers stick to procedural and ethical safeguards.

VALUE DELIVERY

If we look at your work from the point of view of value delivery: how radical is the difference between value delivery in PRC and in liberal democracies?

The differences in value delivery between the PRC and liberal democracies such as the Netherlands or Belgium, are quite stark, especially when it comes to their judicial systems.

The Marxist-Leninist nature of China's political-legal system is a unilateral worldview that values unity and control as well as achieving the overarching political goals of the party-state. China's political-legal system exists to achieve a utopian future, not to govern the present.

Within this ideological framework, it is only the Leninist vanguard party that can determine what the future should look like, as an exclusive guardian. Its worldview does not have any legitimate space for contention between ideas of what (public) life should look like. This means that other values such as procedural rights and judicial fairness are only relevant to the extent that they serve the broader socio-economic and political context.

Therefore, courts prioritise political stability and control: their primary function is to act as institutions that maintain socio-political stability. Some go as far as to argue that we should not call Chinese courts "courts" or refer to them as legal institutions, but as "stability-maintenance institutions". The priority to maintain stability surpasses all other values, including the legality of a case.

This is extremely different from liberal democracies that subscribe to the ideology of rule of law. Here, values such as impartiality and fair procedure are of paramount importance. In a rule of law state, the law governs the present, and liberal democracies are overall pluralistic societies that allow for contestation what the future and (public) life should look like. Therefore, it is important to have fair and impartial rules that govern the present. Courts exist to uphold the law and protect citizens from abusive interference by the government into private life.

To put it bluntly: in China, law and courts exist to achieve a Utopian future, they focus on substantive outcomes. In liberal democracies, they exist to protect citizens and govern the present, focusing on rules and procedures.

ROBOT JUDGES

Judges replaced by algorithms that decide disputes seems, for any executive, a seductive tool for cost reduction and control by executives. In light of your observations

of judges in PRC, how can judiciaries in liberal democracies deal with that perspective, which is so seductive to executives? And the question, to what extent AI systems can and will replace human judges is much debated. Do you think replacing judges with technology is the right question?

Whether this is a good or bad development, really depends on the position one takes. As I stated, from a Chinese perspective, especially under Xi Jinping, who is always looking to increase and tighten vertical political control over the entire party-state governance apparatus, the digitisation and automation of its judiciary, is something that is helping him achieve this.

This future is quite worrying from a European perspective because European judiciaries have a completely different role in democratic societies. With the encroachment of autocratic governments on judicial independence in countries such as Hungary and Poland, the potential of AI and ADM's to undermine the rule of law is quite worrying. These governments might want to push for the digitisation and automation of their justice system as a pathway to gain more control over it by reducing the discretionary decision-making space for judges. Even for countries such as the Netherlands, there are worrying signs. We have seen that the Dutch government can easily fall into the trap of prioritising efficiency and automation at the cost of human dignity, oversight, and meaningful participation in decision-making processes. We only need to look at the "Toeslagen Affaire" to see how far it can go, even in a well-meaning liberal democracy.

Moreover, I do not believe that asking the question of "should we replace human judges with AI?" is the right question, because I do not think this should be up for debate. Justice, fairness, rights, law, governance, disputes, ... all of these are human issues. I firmly believe that they should be handled by humans, and not ADM.

Rather, the question should be how we can best integrate AI in a way that it delivers the values that we want to deliver with our justice system. This question forces us to reflect on what values we stand for as a liberal democracy, and what values we want to protect and deliver through our judicial institutions. It is exactly because we are a democratic society where there is space for a contention of those values and ideas, that this is the more important question.

FAIRNESS

Procedural fairness can be digitized up to a point, but can substantive fairness when we do not even know how to define fairness in different contexts? In that light, is emulating human judges a desirable goal for technologies such as AI? I would like your thoughts on this.

The concept of fairness is extremely contextual. It is therefore extremely difficult to put this concept into an algorithm. However, the Chinese conception of fairness lends itself better for automation. Therefore, I would argue that the emulation of human judges with AI is more realistic in China.

In the Chinese context, substantive fairness has traditionally trumped procedural fairness in the sense that law, institutions, and litigants are more outcome-oriented in evaluations of the fairness of a process. In addition, Chinese legal scholars also follow a clear substantive doctrine: advancing the cause of socialist modernization for the collective people instead of the autonomous individual. Procedural rights are only important in so far that they contribute to achieving overarching political goals and

do not exist as an inalienable right in and of itself. Therefore, “fairness” in the Chinese context is collectivist and instrumentalist in nature and purpose. The “fairness” of a case outcome is determined by the extent to which it serves the broader socio-economic and political context.

As I explained earlier, only the party-state can determine how (public) life should look. This also means that only the party-state can decide what is “fair” and “not fair”. The exclusive position and leadership of the party-state over the law and public life are irreconcilable with procedural rationality and accountability that lie at the heart of Western conceptions of “fairness”.

In short, “fairness” is collectivist and instrumental in nature and purpose, is determined by the vanguard party, cannot be contested, and has a strong moral and substantive component. Only the CCP can determine what is “fair” and administrate it. Political-legal institutions, such as courts, perpetuate this by legitimizing the authority of the CCP and its prerogative to determine what is “fair”.

In short, both the Chinese conception of “fairness” and the role of courts and judges in Chinese society make them more suitable and convenient to emulate through AI technologies. Nonetheless, I do not believe that is the goal of the central government. Although they do want to integrate AI into the judicial process as much as possible, the bottom line of political stability can only be guaranteed by the party itself. Outsourcing an important governance tool such as judging to an AI, goes straight against one the key principles of Marxist-Leninism, i.e., maintaining control.

Therefore, I would argue that the Chinese party-state has understood that dispute resolution is a fundamentally human affair that requires a human touch. This strengthens my own conviction that emulating human judges is not a desirable goal. The goal of AI and other technologies should be to enhance the work and delivery of services by judges, but never to replace them.

ANY OTHER LESSONS?

What other lessons for IT in judicial systems in liberal democracies do you have? Does SCR give us any more hints for the future of Smart Justice in Europe?

I think the main lesson from SCR in China is that it shows us what will happen if we turn off our democratic guardrails. Our justice apparatus will be captured by the executive through the increased digitised and automated judicial procedures, resulting in a loss of human touch. We only have to look at some well-known mishaps with ADM, such as the Dutch childcare benefits scandal,¹ to understand the implications of integrating more and more ADM into the justice apparatus. Avoiding it is impossible, but we have to protect the human touch of justice at all costs.

FUNDING INFORMATION

The PhD was funded by a NWO Vici grant.

¹ The Dutch childcare benefits scandal refers to a political scandal where parents were wrongly accused of making fraudulent benefit claims, resulting in demands to repay their received allowances in full. It was later discovered that parents were wrongly accused due to a discriminatory algorithm. See, e.g.: <https://www.uva.nl/en/shared-content/faculteiten/en/faculteit-der-rechtsgeleerdheid/news/2023/02/childcare-benefit-scandal-transparency.html?cb> accessed 14/03/2025.

COMPETING INTERESTS

Dr. Dory Reiling is a section editor of this Journal.

Reiling and
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*International Journal
for Court Administration*
DOI: 10.36745/ijca.679

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TO CITE THIS ARTICLE:

Dory Reiling and Straton Papagianneas, 'Lessons from China's Smart Court Reform' (2025) 16(1) *International Journal for Court Administration* 2. DOI: <https://doi.org/10.36745/ijca.679>

Published: 28 April 2025

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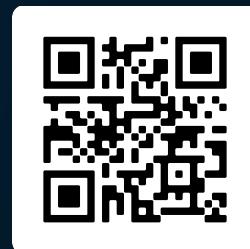
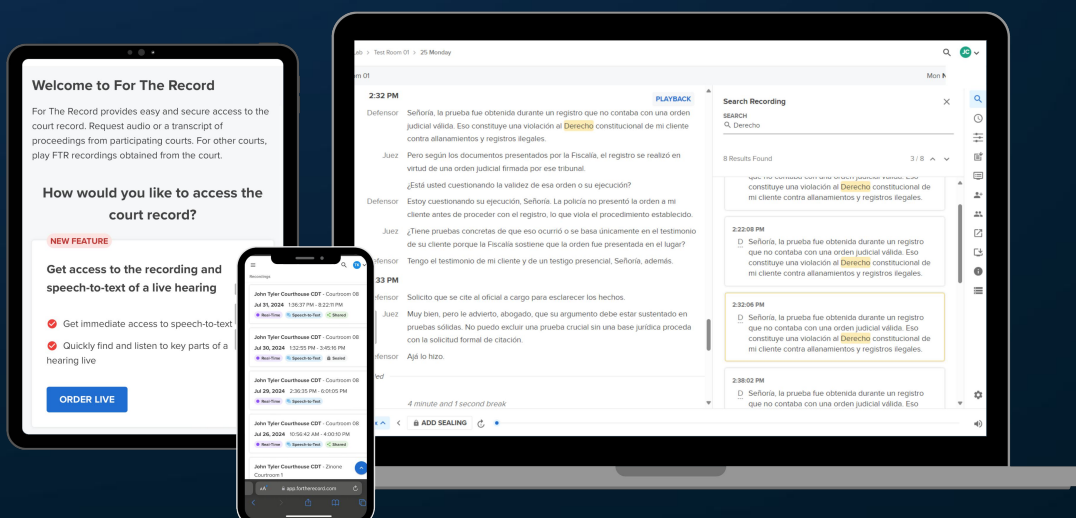
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